

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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REPUBLIC OF COLOMBIA, etc., et al.,

Plaintiffs,

- v -

DIAGEO NORTH AMERICA, INC., et al.,

Defendants.  
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**ORDER**

CV-04-4372 (NGG)(VVP)

The plaintiffs seek an order precluding the defendants from pursuing information from the plaintiffs by means of requests, known as *derechos de petición*, that are the Colombian equivalent of Freedom of Information Act requests here in the United States. They contend that the requests contravene agreements between the parties as well as a scheduling order entered by the court. The plaintiffs do not supply any agreements between the parties for the court to consider which might apply to the *derechos*. Nor is the court aware of any scheduling order that would prevent the defendants from pursuing information in that fashion. The only scheduling order entered by the court concerns discovery, and this court does not consider the obtaining of information by means of FOIA requests to be discovery. *Cf. Jackson v. First Fed. Sav. of Ark.*, 709 F. Supp. 887, 889 (E.D. Ark. 1989). The suggestion that the *derechos* constitute improper communications by the defendants with the plaintiffs is entirely unsupported by any authority, and ignores considerable authority to the contrary. *See, e.g., Wright v. Stern*, Nos. 01 Civ. 4437, 02 Civ. 4699, 2003 WL 23095571, at \*1 (S.D.N.Y. Dec. 30, 2003) (*citing Niesig v. Team I*, 76 N.Y.2d 363, 374, 559 N.Y.S.2d 493, 498 (1990)); *cf. Fusco v. City of Albany*, 409 N.Y.S.2d 763, 766 (N.Y. Sup. Ct. 1986). Moreover, the notion that the court should insulate governments from

requests for information under normal processes otherwise available to the public whenever the governments engage in litigation is not appealing. The plaintiffs' application is DENIED.

**SO ORDERED:**

*Viktor V. Pohorelsky*

VIKTOR V. POHORELSKY  
United States Magistrate Judge

Dated: Brooklyn, New York  
November 5, 2007